

for “through 2008” and “September 30, 2010” for “September 30, 2008”.

2006—Subsec. (f). Pub. L. 109-163 substituted “through 2008” for “through 2006” and “September 30, 2008” for “September 30, 2006”.

COMPTROLLER GENERAL REPORT

Pub. L. 108-136, div. A, title VIII, §848(b), Nov. 24, 2003, 117 Stat. 1555, required the Comptroller General to review the implementation of this section and submit to Congress a report on such review not later than two years after Nov. 24, 2003.

§ 168. Military-to-military contacts and comparable activities

(a) PROGRAM AUTHORITY.—The Secretary of Defense may conduct military-to-military contacts and comparable activities that are designed to encourage a democratic orientation of defense establishments and military forces of other countries.

(b) ADMINISTRATION.—The Secretary may provide funds appropriated for carrying out subsection (a) to the following officials for use as provided in subsection (c):

(1) The commander of a combatant command, upon the request of the commander.

(2) An officer designated by the Chairman of the Joint Chiefs of Staff, with respect to an area or areas not under the area of responsibility of a commander of a combatant command.

(3) The head of any Department of Defense component.

(c) AUTHORIZED ACTIVITIES.—An official provided funds under subsection (b) may use those funds for the following activities and expenses:

(1) The activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities.

(2) The activities of military liaison teams.

(3) Exchanges of civilian or military personnel between the Department of Defense and defense ministries of foreign governments.

(4) Exchanges of military personnel between units of the armed forces and units of foreign armed forces.

(5) Seminars and conferences held primarily in a theater of operations.

(6) Distribution of publications primarily in a theater of operations.

(7) Personnel expenses for Department of Defense civilian and military personnel to the extent that those expenses relate to participation in an activity described in paragraph (3), (4), (5), or (6).

(8) Reimbursement of military personnel appropriations accounts for the pay and allowances paid to reserve component personnel for service while engaged in any activity referred to in another paragraph of this subsection.

(9) The assignment of personnel described in paragraph (3) or (4) on a non-reciprocal basis if the Secretary of Defense determines that such an assignment, rather than an exchange of personnel, is in the interests of the United States.

(d) RELATIONSHIP TO OTHER FUNDING.—Any amount provided during any fiscal year to an official under subsection (b) for an activity or expense referred to in subsection (c) shall be in ad-

dition to amounts otherwise available for those activities and expenses for that fiscal year.

(e) LIMITATIONS.—(1) Funds may not be provided under this section for a fiscal year for any activity for which—

(A) funding was proposed in the budget submitted to Congress for that fiscal year pursuant to section 1105(a) of title 31; and

(B) Congress did not authorize appropriations.

(2) An activity may not be conducted under this section with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.

(3) Funds may not be provided under this section for a fiscal year for any country that is not eligible in that fiscal year for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(4) Except for those activities specifically authorized under subsection (c), funds may not be used under this section for the provision of defense articles or defense services to any country or for assistance under chapter 5 of part II of the Foreign Assistance Act of 1961.

(5) Funds available to carry out this section shall be available, to the extent provided in appropriations Acts, for programs or activities under this section that begin in a fiscal year and end in the following fiscal year.

(f) ACTIVE DUTY END STRENGTHS.—A member of a reserve component who is engaged in activities authorized under this section shall not be counted for purposes of the following personnel strength limitations:

(1) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to under this section.

(2) The authorized daily average for members in pay grades E-8 and E-9 under section 517 of this title for the calendar year in which the member carries out such activities.

(3) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.

(g) MILITARY-TO-MILITARY CONTACTS DEFINED.—In this section, the term “military-to-military contacts” means contacts between members of the armed forces and members of foreign armed forces through activities described in subsection (c).

(Added Pub. L. 103-337, div. A, title XIII, §1316(a)(1), Oct. 5, 1994, 108 Stat. 2898; amended Pub. L. 104-106, div. A, title IV, §416, Feb. 10, 1996, 110 Stat. 289; Pub. L. 108-375, div. A, title IV, §416(e), Oct. 28, 2004, 118 Stat. 1868; Pub. L. 110-181, div. A, title XII, §1201, Jan. 28, 2008, 122 Stat. 363; Pub. L. 110-417, [div. A], title XII, §1202(a), Oct. 14, 2008, 122 Stat. 4622.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsection (e)(3), (4), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Chapter 5 of part II of the Act is classified generally to part V (§2347 et seq.) of subchapter II of chapter 32 of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the

Code, see Short Title note set out under section 2151 of Title 22 and Tables.

AMENDMENTS

2008—Subsec. (c)(9). Pub. L. 110-181 added par. (9).

Subsec. (e)(5). Pub. L. 110-417 added par. (5).

2004—Subsec. (f). Pub. L. 108-375 reenacted heading without change and amended text generally. Prior to amendment, text read as follows:

“(1) A member of a reserve component referred to in paragraph (2) shall not be counted for purposes of the following personnel strength limitations:

“(A) The end strength for active-duty personnel authorized pursuant to section 115(a)(1) of this title for the fiscal year in which the member carries out the activities referred to in paragraph (2).

“(B) The authorized daily average for members in pay grades E-8 and E-9 under section 517 of this title for the calendar year in which the member carries out such activities.

“(C) The authorized strengths for commissioned officers under section 523 of this title for the fiscal year in which the member carries out such activities.

“(2) A member of a reserve component referred to in paragraph (1) is any member on active duty under an order to active duty for 180 days or more who is engaged in activities authorized under this section.”

1996—Subsecs. (f), (g). Pub. L. 104-106 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 2008 AMENDMENT

Pub. L. 110-417, [div. A], title XII, §1202(b), Oct. 14, 2008, 122 Stat. 4622, provided that: “The amendment made by subsection (a) [amending this section] shall take effect on October 1, 2008, and shall apply with respect to programs and activities under section 168 of title 10, United States Code, as so amended, that begin on or after that date.”

AUTHORITY FOR ASSIGNMENT OF CIVILIAN EMPLOYEES OF THE DEPARTMENT OF DEFENSE AS ADVISORS TO FOREIGN MINISTRIES OF DEFENSE

Pub. L. 112-81, div. A, title X, §1081, Dec. 31, 2011, 125 Stat. 1599, provided that:

“(a) AUTHORITY.—The Secretary of Defense may, with the concurrence of the Secretary of State, carry out a program to assign civilian employees of the Department of Defense as advisors to the ministries of defense (or security agencies serving a similar defense function) of foreign countries in order to—

“(1) provide institutional, ministerial-level advice, and other training to personnel of the ministry to which assigned in support of stabilization or post-conflict activities; or

“(2) assist such ministry in building core institutional capacity, competencies, and capabilities to manage defense-related processes.

“(b) TERMINATION OF AUTHORITY.—

“(1) IN GENERAL.—The authority of the Secretary of Defense to assign civilian employees under the program under subsection (a) terminates at the close of September 30, 2014.

“(2) CONTINUATION OF ASSIGNMENTS.—Any assignment of a civilian employee under subsection (a) before the date specified in paragraph (1) may continue after that date, but only using funds available for fiscal year 2012, 2013, or 2014.

“(c) ANNUAL REPORT.—Not later than December 30 each year through 2014, the Secretary of Defense shall submit to the Committees on Armed Services and Foreign Relations of the Senate and the Committees on Armed Services and Foreign Affairs of the House of Representatives a report on activities under the program under subsection (a) during the preceding fiscal year. Each report shall include, for the fiscal year covered by such report, the following:

“(1) A list of the defense ministries to which civilian employees were assigned under the program.

“(2) A statement of the number of such employees so assigned.

“(3) A statement of the duration of the various assignments of such employees.

“(4) A brief description of the activities carried out such by such employees pursuant to such assignments.

“(5) A description of the criteria used to select the defense ministries identified in paragraph (1) and the civilian employees so assigned.

“(6) A statement of the cost of each such assignment.

“(7) Recommendations, if any, about changes to the authority, including an assessment of whether expanding the program authority to include assignments to bilateral, regional, or multilateral international security organizations would advance the national security interests of the United States.

“(d) COMPTROLLER GENERAL REPORT.—Not later than December 30, 2013, the Comptroller General of the United States shall submit to the committees of Congress specified in subsection (c) a report setting forth an assessment of the effectiveness of the advisory services provided by civilian employees assigned under the program under subsection (a) as of the date of the report in meeting the purposes of the program.”

AUTHORITY FOR NON-RECIPROCAL EXCHANGES OF DEFENSE PERSONNEL BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES

Pub. L. 111-84, div. A, title XII, §1207, Oct. 28, 2009, 123 Stat. 2514, provided that:

“(a) AUTHORITY TO ENTER INTO NON-RECIPROCAL INTERNATIONAL EXCHANGE AGREEMENTS.—

“(1) IN GENERAL.—The Secretary of Defense may enter into non-reciprocal international defense personnel exchange agreements.

“(2) INTERNATIONAL DEFENSE PERSONNEL EXCHANGE AGREEMENTS DEFINED.—For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of an ally of the United States or another friendly foreign country for the exchange of military and civilian personnel of the defense ministry of that foreign government.

“(b) ASSIGNMENT OF PERSONNEL.—

“(1) IN GENERAL.—Pursuant to a non-reciprocal international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense.

“(2) MUTUAL AGREEMENT REQUIRED.—An individual may not be assigned to a position pursuant to a non-reciprocal international defense personnel exchange agreement unless the assignment is acceptable to both governments.

“(c) PAYMENT OF PERSONNEL COSTS.—

“(1) IN GENERAL.—The foreign government with which the United States has entered into a non-reciprocal international defense personnel exchange agreement shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its personnel under such agreement in accordance with the applicable laws and regulations of such government.

“(2) EXCLUDED COSTS.—Paragraph (1) does not apply to the following costs:

“(A) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.

“(B) Costs incident to the use of facilities of the United States Government in the performance of assigned duties.

“(C) The cost of temporary duty of the exchanged personnel directed by the United States Government.

“(d) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to a non-reciprocal agreement under this section may take or be required to take an oath of allegiance or to hold an official capacity in the government.

“(e) REPORT.—

“(1) IN GENERAL.—Not later than 90 days after the end of the fiscal year in which the authority in subsection (a) has been exercised, the Secretary of Defense shall submit to the appropriate congressional committees a report on the use of the authority through the end of such fiscal year.

“(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall include the number of non-reciprocal international defense personnel exchange agreements, the number of personnel assigned pursuant to such agreements, the Department of Defense component to which the personnel have been assigned, the duty title of each assignment, and the countries with which the agreements have been concluded.

“(3) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term ‘appropriate congressional committees’ means—

“(A) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

“(B) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

“(f) DURATION OF AUTHORITY.—The authority under this section shall expire on September 30, 2012.”

LIMITATION ON MILITARY-TO-MILITARY EXCHANGES AND CONTACTS WITH CHINESE PEOPLE'S LIBERATION ARMY

Pub. L. 106–65, div. A, title XII, § 1201, Oct. 5, 1999, 113 Stat. 779, as amended by Pub. L. 111–84, div. A, title XII, § 1246(d), Oct. 28, 2009, 123 Stat. 2545; Pub. L. 112–81, div. A, title X, § 1066(e)(2), Dec. 31, 2011, 125 Stat. 1589, provided that:

“(a) LIMITATION.—The Secretary of Defense may not authorize any military-to-military exchange or contact described in subsection (b) to be conducted by the armed forces with representatives of the People's Liberation Army of the People's Republic of China if that exchange or contact would create a national security risk due to an inappropriate exposure specified in subsection (b).

“(b) COVERED EXCHANGES AND CONTACTS.—Subsection (a) applies to any military-to-military exchange or contact that includes inappropriate exposure to any of the following:

“(1) Force projection operations.

“(2) Nuclear operations.

“(3) Advanced combined-arms and joint combat operations.

“(4) Advanced logistical operations.

“(5) Chemical and biological defense and other capabilities related to weapons of mass destruction.

“(6) Surveillance and reconnaissance operations.

“(7) Joint warfighting experiments and other activities related to a transformation in warfare.

“(8) Military space operations.

“(9) Other advanced capabilities of the Armed Forces.

“(10) Arms sales or military-related technology transfers.

“(11) Release of classified or restricted information.

“(12) Access to a Department of Defense laboratory.

“(c) EXCEPTIONS.—Subsection (a) does not apply to any search-and-rescue or humanitarian operation or exercise.”

AGREEMENTS FOR EXCHANGE OF DEFENSE PERSONNEL BETWEEN UNITED STATES AND FOREIGN COUNTRIES

Pub. L. 104–201, div. A, title X, § 1082, Sept. 23, 1996, 110 Stat. 2672, provided that:

“(a) AUTHORITY TO ENTER INTO INTERNATIONAL EXCHANGE AGREEMENTS.—(1) The Secretary of Defense may enter into international defense personnel exchange agreements.

“(2) For purposes of this section, an international defense personnel exchange agreement is an agreement with the government of an ally of the United States or another friendly foreign country for the exchange of—

“(A) military and civilian personnel of the Department of Defense; and

“(B) military and civilian personnel of the defense ministry of that foreign government.

“(b) ASSIGNMENT OF PERSONNEL.—(1) Pursuant to an international defense personnel exchange agreement, personnel of the defense ministry of a foreign government may be assigned to positions in the Department of Defense and personnel of the Department of Defense may be assigned to positions in the defense ministry of such foreign government. Positions to which exchanged personnel are assigned may include positions of instructors.

“(2) An agreement for the exchange of personnel engaged in research and development activities may provide for assignment of Department of Defense personnel to positions in private industry that support the defense ministry of the host foreign government.

“(3) An individual may not be assigned to a position pursuant to an international defense personnel exchange agreement unless the assignment is acceptable to both governments.

“(c) RECIPROCITY OF PERSONNEL QUALIFICATIONS REQUIRED.—Each government shall be required under an international defense personnel exchange agreement to provide personnel with qualifications, training, and skills that are essentially equal to those of the personnel provided by the other government.

“(d) PAYMENT OF PERSONNEL COSTS.—(1) Each government shall pay the salary, per diem, cost of living, travel costs, cost of language or other training, and other costs for its own personnel in accordance with the applicable laws and regulations of such government.

“(2) Paragraph (1) does not apply to the following costs:

“(A) The cost of temporary duty directed by the host government.

“(B) The cost of training programs conducted to familiarize, orient, or certify exchanged personnel regarding unique aspects of the assignments of the exchanged personnel.

“(C) Costs incident to the use of the facilities of the host government in the performance of assigned duties.

“(e) PROHIBITED CONDITIONS.—No personnel exchanged pursuant to an agreement under this section may take or be required to take an oath of allegiance to the host country or to hold an official capacity in the government of such country.

“(f) RELATIONSHIP TO OTHER AUTHORITY.—The requirements in subsections (c) and (d) shall apply in the exercise of any authority of the Secretaries of the military departments to enter into an agreement with the government of a foreign country to provide for the exchange of members of the armed forces and military personnel of the foreign country. The Secretary of Defense may prescribe regulations for the application of such subsections in the exercise of such authority.”

CHAPTER 7—BOARDS, COUNCILS, AND COMMITTEES

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